

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: T.B., N.B., and J.G. : APPEAL NO. C-170422
 : TRIAL NO. F 09 2176 X
 :
 : *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In this appeal, appellant mother challenges the judgment of the Hamilton County Juvenile Court adopting a magistrate’s decision to terminate her parental rights and to award permanent custody of three of her children, T.B., N.B., and J.G., to the Hamilton County Department of Job and Family Services (“JFS”). Advancing one assignment of error, mother argues the trial court’s determination that it was in the best interest of the children that permanent custody be granted to JFS was contrary to the weight of the evidence. For the reasons that follow, we affirm.

T.B. and J.G. were the subjects of a JFS complaint filed June 20, 2014. JFS was given interim custody of these children the same day. N.B., who was born in April 2015, was placed in JFS’s interim custody on April 10, 2015. Following an October 2, 2015 hearing, T.B., N.B., and J.G. were adjudicated dependent. JFS was granted temporary custody of the children and they were placed in a foster-to-adopt home. On November 19, 2015, JFS moved to modify the award of temporary custody

to permanent custody. Due to various issues regarding service of process, a custody hearing was not held until February 7, 2017, and March 29, 2017.

The magistrate heard testimony regarding T.B.'s and J.G.'s psychological disorders and their need for supervision, extraordinary care and support, and permanence; the children's bond with their foster care provider who was adhering to a specific medical regime for T.B.'s and J.G.'s care, and providing stability and consistency for the daily care of all three children; mother's depression and anxiety diagnoses; mother's delayed participation in case-plan services; mother's history with abusive relationships and her mental-health status; mother's lack of concern or interest in the children's ongoing mental-health issues and educational needs; and JFS's concerns regarding mother's impulsiveness, the deficiencies in her decision-making skills, and her minimization during the pendency of the custody proceedings of her mental-health needs as well as those of the children.

There was general agreement that mother did not engage in the case-plan services offered to her until late summer 2015, more than a year after the services had been offered. She did not complete the services until 2016, including her diagnostic assessment for mental-health issues, which she completed in March 2016, after having failed to keep five previously scheduled appointments. And mother did not complete parenting classes through Beech Acres Parenting Center until summer 2016, after having been discharged from the classes in 2015 for poor attendance.

During the custody trial, mother testified regarding her progress and stability and disputed the negative aspects of the JFS caseworker's testimony. The children's attorney and their guardian ad litem both supported a grant of permanent custody to JFS.

Following the hearing, the magistrate granted JFS permanent custody of the children. Mother filed objections. Following a hearing, the trial court overruled her objections and adopted the magistrate's decision as its judgment. Mother timely appealed.

Under former R.C. 2151.414(B)(1),¹ before a juvenile court may terminate parental rights and grant permanent custody to a children's services agency, it must find both that it is in the best interest of the child to be placed in the permanent custody of the moving agency and that one of the conditions listed in R.C. 2151.414(B) is met. R.C. 2151.414(B)(1). While the court must find that both prongs are supported by clear and convincing evidence, a reviewing court will not substitute its judgment for that of the juvenile court where some competent, credible evidence supports its determination. *See In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46; *see also In re W.M.*, 1st Dist. Hamilton No. C-170003, 2017-Ohio-1398, ¶ 14.

In mother's sole assignment of error, she challenges the trial court's determination only that an award of permanent custody to JFS is in the children's best interest. She argues the trial court's judgment is against the manifest weight of the evidence.

In reviewing a challenge to the weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *In re A.B.*, 1st

¹ We will apply the version of the statute in effect on the date the motion for permanent custody was filed in this case, November 19, 2015. *See In re C.M.*, 1st Dist. Hamilton Nos. C-150395 and C-150396, 2015-Ohio-3971, ¶ 13.

Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 16, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12.

R.C. 2151.414(D)(1) provides that

in determining the best interest of a child * * * the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with * * * any * * * person who may significantly affect the child;

(b) The wishes of the child * * * with due regard for the maturity of the child;

(c) The custodial history of the child * * *;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency * * *.

The magistrate considered these factors, noting: T.B.'s and J.G.'s very specialized needs and the foster care provider's success in addressing them; the children's need for permanence; the children's progress of "healing in their current environment" following trauma from their past environment; the children's extended period in foster care, particularly N.B., who has spent her entire life in foster care; mother's protracted failure to engage in and complete case-plan services; and the consequential impact this failure had on the amount of time the children spent in foster care.

Based on these and other factors, the trial court determined that it was in the children's best interest to remain in their current placement with an award of permanent custody to JFS.

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After reviewing the entire record, we hold that the trial court's best-interests determination was not against the weight of the evidence and its judgment was supported by competent, credible evidence. Mother's assignment of error is therefore overruled, and the trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on November 15, 2017
per order of the court _____.

Presiding Judge